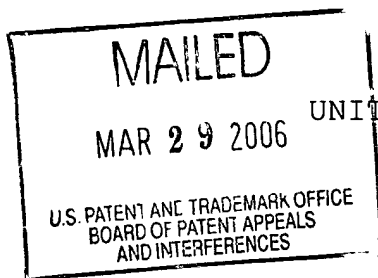


The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.



UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS J. BORMANN, GERARD R. DELGIACCO
and BYRON SELMAN

Appeal No. 2006-0793
Application No. 09/806,322

ON BRIEF

Before KIMLIN, GARRIS and WARREN, Administrative Patent Judges.
KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1, 2, 4-7, 9-14 and 17-25. Claims 1 and 2 are illustrative:

1. A filter device for processing a biological fluid comprising:

a housing having an inlet and an outlet and defining a fluid flow path between the inlet and the outlet;

a filter disposed in the housing across the fluid flow path, the filter comprising:

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a first filter element comprising a porous fibrous leukocyte depletion medium having a CWST of at least about 70 dynes/cm; and

a second filter element comprising a porous membrane having a pore size of about 5 micrometers or less, said second filter element being disposed downstream of the first filter element;

wherein the filter is arranged to allow plasma to pass therethrough and substantially prevent the passage of leukocytes and red blood cells therethrough.

2. A filter device for processing a biological fluid comprising:

a housing having an inlet and an outlet and defining a fluid flow path between the inlet and the outlet;

a filter disposed in the housing across the fluid flow path, the filter comprising:

a first filter element comprising a porous fibrous red cell barrier and leukocyte depletion medium having a CWST of at least about 70 dynes/cm; and

a second filter element comprising a porous membrane having a pore size of about 5 micrometers or less, said second filter element being disposed downstream of the first filter element;

wherein the filter is arranged to allow plasma to pass therethrough and substantially prevent the passage of leukocytes therethrough.

The examiner relies upon the following reference as evidence of obviousness:

Pall et al. (Pall)

5,587,070

Dec. 24, 1996

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Appellants' claimed invention is directed to a filter device for processing a biological fluid, such as blood, comprising a housing having an inlet and an outlet for the fluid. The device comprises a filter disposed in the housing, with the filter comprising first and second filter elements. The first filter element is a leukocyte depletion medium that may also comprise a red cell barrier (claim 2), and the second filter element is a porous membrane having a pore size of about 5 micrometers or less. The filter allows for the passage of plasma while preventing the passage of leukocytes and red blood cells.

Appealed claims 1, 2, 4-7, 9-14 and 17-25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Pall.

Appellants submit two groups of claims at page 3 of the principal brief: (I) claims 1, 10, 12, 14 and 21; (II) claims 4-7, 9, 13, 17, 18 and 22-24. Accordingly, the claims in each group stand or fall together.

We have thoroughly reviewed each of appellants' arguments for patentability. However, we are in complete agreement with the examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of § 103 in view of the applied prior art. Accordingly, we will

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sustain the examiner's rejection for essentially those reasons expressed in the Answer.

Appellants have not refuted the examiner's factual determination that Pall, like appellants, discloses a system for filtering blood wherein plasma is separated from leukocytes and red blood cells. Nor have appellants refuted the examiner's finding that the system of Pall comprises a first filter comprising a porous fibrous leukocyte depletion medium and a second filter having a pore size of about 5 micrometers or less that allows the passage of plasma but prevents the passage of leukocytes and red blood cells. On the other hand, the examiner recognizes that Pall does not expressly teach that the first and second filter elements are disposed in a housing, as presently claimed. However, we fully concur with the examiner that it would have been obvious for one of ordinary skill in the art to position the first and second filter elements of Pall in a single housing for the purpose of achieving compactness and a portability of the system. As for the separately argued requirement of claim 2 that the first filter element comprise a red cell barrier and a leukocyte depletion medium, the examiner correctly points out that Pall specifically teaches that the

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first porous medium may comprise "a leukocyte depletion medium and a red cell barrier medium, or combinations thereof" (column 11, lines 13-15).

We also agree with the examiner that appellants' arguments neither address the thrust of the examiner's rejection nor are germane to the claimed subject matter on appeal. Appellants focus upon the different operations of the reference leukocyte depletion assembly and non-centrifugal separation device, and seem to make the argument that a modification of Pall's system is necessary to arrive at the presently claimed filter device. However, appellants have pointed to no structural differences between the first and second filter elements within the scope of the appealed claims and the filter elements fairly taught by Pall, with the exception of the claimed housing. Again, we are confident that it would have been obvious for one of ordinary skill in the art to situate the first and second filter elements of Pall within a single housing.

As a final point, we note that appellants base no argument upon objective evidence of nonobviousness, such as unexpected results, which would serve to rebut the inference of obviousness established by the examiner.

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In conclusion, based on the foregoing, the examiner's decision rejecting the appealed claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv) (effective Sep. 13, 2004; 69 Fed. Reg. 49960 (Aug. 12, 2004); 1286 Off. Gaz. Pat. Office 21 (Sep. 7, 2004)).

AFFIRMED

Edward C. Kent

EDWARD C. KIMLIN
Administrative Patent Judge

Barry R. Linn

BRADLEY R. GARRIS
Administrative Patent Judge

BOARD OF PATENT
APPEALS AND
INTERFERENCES

Ch. J. Herrera

CHARLES F. WARREN
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